For the same reasons that have been considered in the preceding part of this discussion, it has always been the rule in Virginia that equitable interests cannot be subjected to the payment of debts by legal proceedings, but that the proper remedy is by a bill in equity.[20] And § 2428 of the Virginia Code, which provides that "Estates of every kind, holden or possessed in trust, shall be subject to debts and charges of the persons to whose use or to whose benefit they are holden or possessed, as they would be if those persons owned the like interest in the things holden or possessed, as in the uses or trusts thereof," seems only to make equitable estates liable for debts as if they were legal estates, but does not seem to give the right to subject such equitable estates by legal proceedings.

However, in the case of *Spence* v. *Repass* [21] it was held that the equity of redemption could be levied on by a legal execution. The opinion did not cite authority for its decision and did not discuss the question. Professor Lile's able criticism of this case and the doctrine there announced appeared in 4 *Virginia Law Register* 255.

RIGHT OF MUNICIPAL CORPORATION TO ACQUIRE PROPERTY OF STATE UNIVERSITY BY ADVERSE POSSESSION.—It is universally held that no one can, by adverse possession or prescription, acquire or defeat rights against the United States or the States. The maxim that, *"Nullum tempus occurrit regi,"* applies, and, unless the sovereign in express words makes itself subject to statutes of limitations, this defence can never be pleaded against it.[1] These principles are well settled in regard to sovereign states, but when it is sought to apply them to the subdivisions of government, the greatest conflict is found.

This discussion will be confined to the question of whether or not public corporations, not municipalities, are subject to statutes of limitations. The right of abutting owners to acquire title to railway rights-of-way by adverse possession has been considered in a former volume,[2] as have also the rights of individuals to plead the statutes of limitations against the United States on claims not governmental in character,[3] and the rights of individuals to acquire title to municipal property by adverse possession.[4]

In the recent case of *Trustees of University of South Carolina* v. *City of Columbia* (S. C.), 93 S. E. 934, several interesting questions were raised. The University of South Carolina was chartered by the Legislature, and has always been controlled and

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[20] Claytor *v.* Anthony, 6 Rand. 285; Coutts *v.* Walker, 2 Leigh 268; First National Bank *v.* Anderson, 75 Va. 250.

[21] 94 Va. 716.

[1] State *v.* City of Seattle, 57 Wash. 602, 107 Pac. 827; Cox *v.* Board of Trustees, 161 Ala. 639, 49 S. E. 814. See DILLON, MUNICIPAL CORP., 5th ed., § 1188.

[2] 2 VA. LAW REV. 599.

[3] 3 VA. LAW REV. 155.

[4] 4 VA. LAW REV. 492.

supported by the State. Certain lots were granted to it by the State as a part of this support. Later the City of Columbia was authorized to sell certain public lots in the city which were not in use and were not held in trust for any specific purpose by the State. Under the authority to sell these lots, the City sold a certain lot which had been granted to the University, and for more than twenty years held the lot adversely to the University. The City claimed title to the lot by adverse possession for the prescribed period, but it was held that the statute of limitations could not be pleaded against the University.

The first question raised is whether public corporations may take advantage of the maxim "That no time runs against the state," upon the ground that it is a part of the state. There are some cases holding that the state does not endow its subdivisions with any of its attributes of sovereignty, but retains all sovereignty in itself. And, therefore, under this view, public corporations are as much subject to statutes of limitation as individuals.[5]

Again, there are cases which draw the same distinction, that is made in regard to municipal corporations, between the exercise of purely public functions and the exercise of private functions by a public corporation.[6] Under this view, no time can run against a public corporation on a claim that is solely public in character. But if the claim is one arising out of transactions which are private in their nature and the benefit from which does not accrue to the state, then time will run against such a claim.

The above distinction seems sound, but as a matter of fact, it very rarely applies to public corporations. Such corporations generally have no private functions. As was said by the court in the case of *Cox* v. *Board of Trustees*:[7]

> "It therefore clearly appears that the University of Alabama, by whatever corporate name or under the control of whatever agents it may be, is a part of the state; that it was founded by the state; that it is under the state control, and that the University is therefore a public municipal corporation; that as to its land the state is and always has been the trustee; and that the board of trustees are mere agents of the state."

And state insane asylums are of the same nature as state universities. In the case of *Eastern State Hospital* v. *Winston*,[8] the court said:

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[5] Hopkins *v.* Clemson Agricultural College, 221 U. S. 636, 35 L. R. A. (N. S.) 243.

[6] Brown *v.* Trustees of Schools, 224 Ill. 184, 79 N. E. 579, 115 Am. St. Rep. 146, 8 Ann. Cas. 96; Pioneer, etc., Co. *v.* Board of Education, 35 Utah 1, 99 Pac. 150, 136 Am. St. Rep. 1016; Warren County *v.* Lamkin, 93 Miss. 123, 46 South. 497, 22 L. R. A. (N. S.) 920. See State *v.* Regents, 55 Kan. 389, 40 Pac. 656, 29 L. R. A. 378 and note.

[7] *Supra.*

[8] 105 Va. 151, 52 S. E. 837, 3 L. R. A. (N. S.) 746.

"The hospital, being a mere agency of the state, owned and controlled by it, all charges imposed upon its inmates or their estates for taking care of or maintaining them are for the benefit of the state, and, when collected, go to the support of the hospital as much as the money appropriated out of the public treasury. If not collected, the loss falls wholly upon the state; and, if there is a recovery, it will be for the benefit of the state and the state alone, not for the benefit of the directors, nor for the benefit of any subordinate division of the state, but for the whole people—the state at large.

"This being so, we are of the opinion that the statute of limitations did not run against the demand sued on and that the trial court erred in holding that it did."

In many cases it has been held that state institutions, created by the state, and supported and controlled by it, are so much a part of the state that they are immune from suits by individuals, as much as the state itself.[9] Public corporations, having no stockholders, operated for the public good and not for private gain, are mere arms of the state, created by the legislature to carry out purely governmental functions. If such a corporation is so much a part of the state that it cannot be sued at all, it must follow that it is so much a part of the state that no claim can accrue against it by the lapse of time. And it has often been held that state universities, school districts, and asylums are not subject to the statute of limitations.[10] But where the corporation is not supported by the state, nor controlled by it, and where a judgment against the corporation would not directly affect the state itself, many courts hold that such a corporation is not immune from suits by individuals and cannot avail itself of the maxim *"Nullum tempus occurrit regi."* [11]

In some cases it is held that where the charter provides that the corporation can sue and be sued, plead and be impleaded, and

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[9] Overholser *v.* National Home, 68 Ohio St. 236, 67 N. E. 487, 96 Am. St. Rep. 658; Alabama Girls' Industrial School *v.* Reynolds, 143 Ala. 597, 42 South. 114; Alabama Industrial School *v.* Adder, 144 Ala. 555, 42 South. 116, 113 Am. St. Rep. 58; White *v.* Alabama Insane Hospital, 138 Ala. 497, 35 South. 454; Oklahoma, etc., College *v.* Willis, 6 Okla. 593, 52 Pac. 921, 40 L. R. A. 677. In Maia *v.* Eastern State Hospital, 97 Va. 507, 34 S. E. 617, 47 L. R. A. 577, it was said that, if a municipal corporation, having both public and private duties, is not liable for torts in the exercise of public duties, then *a fortiori* a public corporation, having only public and governmental functions is not liable. And the court further said that, since the judgment could not be enforced by levy upon the hospital's property, it was needless to allow the action to proceed. But see *contra,* Hopkins *v.* Clemson Agricultural College, *supra.*

[10] Sixth District *v.* Wright, 154 Cal. 119, 97 Pac. 144; Delta County *v.* Blackburn, 100 Tex. 51, 93 S. W. 419; Cox *v.* Board of Trustees, *supra;* Eastern State Hospital *v.* Winston, *supra.*

[11] Regents *v.* Williams, 9 Gill & J. (Md.) 365, 31 Am. Dec. 72; Hopkins *v.* Clemson Agricultural College, *supra.*

where it appears that the legislative intent was to subject it to the statute of limitations, then the statute can be pleaded as a defence against the corporation.[12] But it is generally held that the mere fact that the corporation can sue and be sued does not give the right to individuals to plead the statute of limitations against it.[13]

Where a suit against the corporation is, in effect, a suit against the state, the corporation has the right to plead any defences which the state might have pleaded. For, it is settled that if the state is the real party in interest, it is not subject to the defence of the statute of limitations, even if the suit be instituted in the name of some other party.[14] Nor is such a corporation liable for negligent injuries and other torts, since the state itself is not liable.[15] Nor can the property of such a corporation be levied on by a private creditor of the corporation, because this would be such an intereference with business of the corporation as to impair its efficiency as a governmental agency.[16]

Although public corporations are not subject to statutes of limitations, it would seem that in certain exceptional cases there might be an *estoppel in pais* against them.[17] Judge Dillon says:[18]

> "The author cannot assent to the doctrine that, as respects public rights, municipal corporations are impliedly within ordinary limitation statutes. It is unsafe to recognize such principles. But there is no danger in recognizing the principle of an *estoppel in pais* as applicable to exceptional cases, since this leaves the courts to decide the question, not by the mere lapse of time but upon all the circumstances of the case to hold the public estopped or not, as right and justice may require."

The second question raised by the principal case is whether a municipal corporation can avail itself of the statute of limitations to acquire rights against individuals. It seems to be well established that the state may take advantage of the statute of limitations to acquire rights as well as private persons,[19] although it has been contended that such right should be denied to the state, because the private person cannot sue the state to secure relief

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[12] Western Lunatic Asylum *v.* Miller, 29 W. Va. 326, 6 Am. St. Rep. 644; Hopkins *v.* Clemson Agricultural College, *supra.*

[13] White *v.* Alabama Insane Hospital, *supra.*

[14] Commonwealth *v.* Lecky, 1 Watts (Pa.), 54, 26 Am. Dec. 33.

[15] See cases cited *infra,* footnote 6. But a public corporation can not take the property of an individual without compensating him for it, although it is a state agency. Garrett *v.* Eastern Lunatic Asylum, 27 Gratt. (Va.) 163; Hopkins *v.* Clemson Agricultural College, *supra.*

[16] Phillips *v.* University of Virginia, 97 Va. 472, 34 S. E. 66, 47 L. R. A. 284.

[17] Reuter *v.* Lawe, 94 Wis. 300, 68 N. W. 955, 34 L. R. A. 733.

[18] DILLON, MUNICIPAL CORP., 5th ed., § 1194.

[19] Stanley *v.* Schwalby, 147 U. S. 508; Malone *v.* Ellis, 198 Mass. 91, 84 N. E. 430, 15 L. R. A. (N. S.) 1120.

from the state's adverse possession or to collect his claims against the state.[20] But this contention clearly has no force where a public corporation may sue and be sued.

In the principal case the University of Alabama was held to be a part of the state, and hence the suit was in effect against the state. The decision was put on the ground that a municipal corporation, which is a part of the state, cannot acquire, by adverse possession, title to state property.[21] The court said:

> "The city governing is the state governing through the city in a circumscribed locality; and for a city to claim the property of the state adversely to the state is the same thing as to claim against itself, a manifest incongruity. Such a holding cannot be adverse."

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[20] Stanley *v.* Schwalby, 85 Tex. 348, 19 S. W. 264.

[21] A railroad cannot acquire, by adverse possession, lands granted by the state for the use of schools. Murtaugh *v.* Chicago, etc., R. Co., 102 Minn. 52, 112 N. W. 860, 120 Am. St. Rep. 609. Nor does the statute of limitations run against a municipality to bar its rights against a county. Osawatomie *v.* Miami County, 78 Kan. 270, 96 Pac. 670.